

TENTATIVE RULINGS for CIVIL LAW and MOTION February 10, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: Capital One Bank v. Lewis

Case No. CV G 09-2223

Hearing Date: February 10, 2010 **Department Fifteen** **9:00 a.m.**

Plaintiff Capital One Bank's unopposed motion to amend the complaint is **GRANTED**. (Code Civ. Proc., 473.) Plaintiff's proposed first amended complaint is deemed to be the amended pleading and it is deemed filed and served as of the date of the granting of the motion.

Defendant shall file his response by March 16, 2010. (Code Civ. Proc., § 471.5, subd. (a).)

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff is to serve a copy of the tentative ruling on defendant by February 11, 2010. No formal order pursuant to California Rules of Court, rule 3.1312, is required.

TENTATIVE RULING

Case: Kuffner v. Ruth

Case No. CV PM 09-1648

Hearing Date: February 10, 2010 **Department Fifteen** **9:00 a.m.**

Plaintiff's opposition to the motion was filed late and therefore, was not considered by the Court. (Code Civ. Proc., § 1005, subd. (b).) Even if the Court had considered Plaintiff's opposition, it would not have changed the Court's tentative ruling.

Defendant's motion to compel further response to special interrogatories is **GRANTED**. The amount that an insurer has paid to the plaintiff's medical care provider(s) may be relevant to the issue of the plaintiff's measure of damages. (Code Civ. Proc., §§ 2017.010 & 2030.300; *Hanif v. Housing Auth. of Yolo County* (1988) 200 Cal.App.3d 635; *Nishihama v. City and County of San Francisco* (2001) 141 Cal.App.4th 1150.)

Plaintiff shall provide further verified responses to the special interrogatories to defendant by **March 12, 2010**.

Defendant's request for sanctions is **DENIED**. The Court finds that plaintiff was substantially justified in objecting to the discovery request given the conflicting Court of Appeal decisions on point.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Lieu v. Countrywide Home Loans, et al.**
Case No. CV CV 09-1269

Hearing Date: **February 10, 2010** **Department Fifteen** **9:00 a.m.**

Defendants' request and supplemental requests for judicial notice are **GRANTED**. (Evid. Code, § 452 & 453; *Fremont Indemnity Co. v. Fremont General Corp.* (1997) 148 Cal.App.4th 97, 113.)

The demurrer to the entire complaint as to Defendants Recontrust Company, N.A. and Mortgage Electronic Registration Systems, Inc. is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs fail to state facts sufficient to state any cause of action against these defendants.

Defendants' demurrer to the first cause of action is **OVERULED**. (Code Civ. Proc., § 430.10, subd. (e); *In re Tobacco II* (2009) 46 Cal.4th 298, 312.)

Defendants' demurrer to second, third, fifth, sixth, seventh and thirteenth causes of action is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs fail to state facts sufficient to constitute the causes of action against defendants. (Code Civ. Proc., §§ 337 & 338, subd. (d); *Montoya v. Countywide Bank, F.S.B.* 2009 WL 1813973; *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153.)

Defendants' demurrer to the fourth cause of action for quiet title is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., §§ 430.10, subd. (e) & 761.020.) Plaintiffs fail to state facts sufficient to constitute a cause of action for quiet title.

Defendants' demurrer to the eighth cause of action is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e); *Francis v. Dunn & Bradstreet, Inc.* (1992) 3 Cal.App.4th 535, 540.) Plaintiffs fail to state facts sufficient to state this cause of action.

Defendants' demurrer to the ninth cause of action for violation of Countrywide settlement agreement is **SUSTAINED WITHOUT LEAVE TO AMEND**. Plaintiff fails to state facts sufficient to constitute the cause of action against defendants. (Code Civ. Proc., § 430.10, subd. (e); *Ratcliff Architects v. Vanir Constr. Management Inc.* (2001) 88 Cal.App.4th 595, 604; *Montoya v. Countywide Bank, F.S.B.* 2009 WL 1813973.)

Defendants' demurrer to the tenth, eleventh, and twelfth causes of action for civil conspiracy, aiding and abetting, and unlawful joint venture is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) The causes of action are not independent claims. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1062.)

Defendants' motion to strike is **GRANTED IN PART WITH LEAVE TO AMEND**. (Code Civ. Proc., §§ 435 & 436.) Plaintiffs "general allegations" paragraphs 19, 22, 30, 40, 41, 45, 46 and 47 are not relevant to the causes of action plead in the complaint. Plaintiffs have not stated facts sufficient to state a claim for punitive damages. (Civ. Code, § 3294.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Ramos v. St. John et al.**

Case No. CV PO 08-3177

Hearing Date: **February 10, 2010** **Department Fifteen** **9:00 a.m.**

Defendant Stephanie Price's motion for summary judgment or, in the alternative, summary adjudication is **GRANTED IN PART** as follows:

Defendant's motion for summary adjudication of the cause of action for negligence and the claim for punitive damages is **GRANTED**. Plaintiff's cause of action for negligence is barred by the doctrine of assumption of the risk. (Code Civ. Proc., § 437c; *Knight v. Jewett* (1992) 3 Cal.4th 296; *Priebe v. Nelson* (2006) 39 Cal.4th 1112, 1129-1131; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; Defendant's Undisputed Material Facts 1-36; Plaintiff's Undisputed Material Facts 1-14, 16-21, 23-27, 29, 31-38.) Plaintiff's claim for punitive damages has no merit. Defendant's conduct does not constitute "oppression," "malice," or "fraud." (Civ. Code, § 3294; Code Civ. Proc., § 437c, subd. (f)(1); Defendant's Undisputed Material Facts 1-36; Plaintiff's Undisputed Material Facts 1-14, 16-21, 23-27, 29, 31-38.)

Defendant's motion for summary adjudication of the cause of action for violation of Labor Code sections 3700 et seq. is **DENIED**. (Code Civ. Proc., § 437c; Lab. Code, §§ 2750.5 & 3700 et seq.; *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341; Plaintiff's Undisputed Material Facts 1-38.) Defendant has not met her burden of showing that the cause of action for violation of Labor Code sections 3700 et seq. has no merit. Plaintiff submitted sufficient admissible evidence to show that there is a triable issue of fact as to this cause of action. (Defendant's Undisputed Material Facts 1-36; Plaintiff's Undisputed Material Facts 1-14, 16-21, 23-27, 29, 31-38.)

Defendant's motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c.)

Defendant's Request for Judicial Notice is **GRANTED**. (Evid. Code, § 452.)

Defendant's objections to Plaintiff's evidence 15, 22, 28, and 30 are **SUSTAINED**. All other objections are **OVERRULED**.

If no hearing is requested, Defendant is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.